

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 19-1057V

UNPUBLISHED

JOSHUA TELL,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: May 13, 2021

Special Processing Unit (SPU);  
Damages Decision Based on Proffer;  
Influenza (Flu) Vaccine; Shoulder  
Injury Related to Vaccine  
Administration (SIRVA)

*Leigh Finfer, Muller Brazil, LLP, Dresher, PA, for Petitioner.*

*Mollie Danielle Gorney, U.S. Department of Justice, Washington, DC, for Respondent.*

### **DECISION AWARDING DAMAGES<sup>1</sup>**

On July 22, 2019, Joshua Tell filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*<sup>2</sup> (the “Vaccine Act”). Petitioner alleges that he received an influenza (“flu”) vaccine in his right deltoid on August 30, 2016, and subsequently suffered from a right shoulder injury related to vaccine administration (“SIRVA”). Petition at 1. Petitioner further alleges that his injury lasted for more than six months. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On January 19, 2021, a ruling on entitlement was issued, finding Petitioner entitled to compensation for SIRVA. On May 12, 2021, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$40,000.00 in pain and suffering. Proffer at 1. In the Proffer, Respondent represented that Petitioner agrees with

<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

<sup>2</sup> National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

the proffered award. *Id.* Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **I award Petitioner a lump sum payment of \$40,000.00 (for pain and suffering), in the form of a check payable to Petitioner.** This amount represents compensation for all damages that would be available under § 15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.<sup>3</sup>

**IT IS SO ORDERED.**

s/Brian H. Corcoran

Brian H. Corcoran  
Chief Special Master

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<sup>3</sup> Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

IN THE UNITED STATES COURT OF FEDERAL CLAIMS  
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Respondent. )  
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**RESPONDENT'S PROFFER ON AWARD OF COMPENSATION**

On July 22, 2019, Joshua Tell (“petitioner”) filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986, **42 U.S.C. §§ 300aa-1 to -34** (“Vaccine Act” or “Act”), alleging that he suffered a Shoulder Injury Related to Vaccine Administration (“SIRVA”), as defined in the Vaccine Injury Table, following administration of an influenza vaccine he received on August 30, 2016. Petition at 1. On January 15, 2021, the Secretary of Health and Human Services (“respondent”) filed a Rule 4(c) Report indicating that this case is appropriate for compensation under the terms of the Act for a SIRVA Table injury. On January 19, 2021, the Chief Special Master issued a Ruling on Entitlement finding petitioner entitled to compensation. ECF No. 35; ECF No. 36.

**Items of Compensation**

A. **Pain and Suffering**

Respondent proffers that petitioner should be awarded \$40,000.00 in pain and suffering.

*See 42 U.S.C. § 300aa-15(a)(4).* Petitioner agrees.

This amounts represent all elements of compensation to which petitioner is entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

**II. Form of the Award**

Petitioner is a competent adult. Evidence of guardianship is not required in this case. Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment as described below and requests that the Chief Special Master's decision and the Court's judgment award the following<sup>1</sup>: a lump sum payment of \$40,000.00, in the form of a check payable to petitioner.

**III. Summary of Recommended Payments Following Judgment**

Lump sum payable to petitioner, Joshua Tell:	<b>\$40,000.00</b>
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Respectfully submitted,

BRIAN M. BOYNTON  
Acting Assistant Attorney General

C. SALVATORE D'ALESSIO  
Acting Director  
Torts Branch, Civil Division

ALEXIS B. BABCOCK  
Acting Deputy Director  
Torts Branch, Civil Division

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<sup>1</sup> Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future lost earnings and future pain and suffering.

/s/ Mollie D. Gorney  
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DATED: May 12, 2021